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February 26, 2003

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth St., S.W.
Washington, D.C. 20554

**Re: Federal-State Joint Board on Universal Service,
CC Docket No. 96-45**

Dear Ms. Dortch:

On behalf of Western Wireless Corp. ("Western Wireless"), Jim Blundell and Mark Rubin of Western Wireless and I met yesterday afternoon with Matthew Brill, legal advisor to Commissioner Kathleen Abernathy, to discuss several pending matters included in the docket referred to above. We handed out the attached materials, as well as several other documents that Western Wireless has already filed in the record of this proceeding.

If you have any questions, please contact me.

Respectfully submitted,

David L. Sieradzki
Counsel for Western Wireless Corp.

Enclosures

cc: Matthew Brill



Competitive Universal Service: Myths and Realities

Myth: *The primary driver inflating the universal service fund is support to competitive eligible telecommunications carriers (ETCs).*

Fact: ILECs continue to receive over 95% of high-cost funds, and the growth in funding to ILECs accounts for 90% of the total growth of the fund.

- The most recent USAC data show that competitive ETCs receive just 4.2% of all federal high-cost fund distributions. ILECs receive the remaining 95.8%.
- High-cost universal service funds to ILECs grew by \$1.23 Billion over the past six quarters, as opposed to a \$139 million increase in funds to competitive ETCs.

Myth: *Portable universal service support gives competitive ETCs an undeserved “windfall.”*

Fact: Wireless carriers that receive universal service funds are required to use those funds to support and maintain universal service, and are doing so. Western Wireless is using the funds to expand and enhance its universal service offerings through deployment of additional cell sites, upgrades to digital technology, and other network investments to provide service to its rural consumers.

- Wireless carriers incur significantly higher costs to serve rural areas, just as ILECs do. The costs of network infrastructure and interconnection are higher in rural areas, and the population base over which to spread fixed costs is smaller.
- In addition, since competitive ETCs serve a lower proportion of the population in any given area than ILECs, their *per-subscriber* embedded costs in any given area are often higher than those of the ILECs.

Myth: *Portable universal service support, in effect, subsidizes artificial competition.*

Fact: Portability of support is necessary to remove a barrier to entry that was artificially imposed by the regulatory regime in place before the 1996 Act, in which only ILECs received support. Courts of appeals have confirmed that portability of universal service support is mandated by the 1996 Act and the competitive neutrality principle.

- To establish a level competitive playing field, in which neither ILECs nor competitors receive artificial advantages, all carriers must receive identical amounts of support per customer they serve.

Myth: *Competitive ETCs are “cherry picking” the high-revenue, lowest-cost customers.*

Fact: The Act requires competitive ETCs and ILECs alike to provide service to any and all customers throughout their designated service areas, and competitive ETCs are doing so. Competitive ETCs receive support only if and when customers choose to take service from them. “Cherry picking” is impossible, and there is no evidence that it is actually occurring.



- The FCC rules provide a process for state commissions to redraw the study area boundaries of rural telcos. Some state commissions are following this established process in order to ensure that rural ILECs' "gerrymandered" study area boundaries do not pose an artificial barrier to entry.

Myth: *When competitive carriers receive support for serving customers that already take service from an ILEC, the support is "duplicative" and unnecessary.*

Fact: As wireless/wireline competition grows in importance, competition in the market for so-called "second lines" is an important arena for competition.

- When a consumer chooses to purchase a "second" line from an ILEC, the carrier receives support for all lines it provides. If a consumer chooses, instead, to purchase a "second" line from a competitive ETC, there is no valid, competitively neutral reason not to provide to the competitive ETCs the same support that the ILEC would receive.
- Just because wireline was there first does not justify a presumption that the wireline phone is always the "primary" line. Many consumers – in rural areas and elsewhere – use their wireless phones as their primary phones, and consumers are placing an increasing proportion of their calls on their wireless phones.
- The Act provides that rural consumers should have access to services that are reasonably comparable to those available in urban areas. Urban consumers have access to reasonably priced first lines *and* "second lines" – rural consumers are entitled to comparable access.

Myth: *Many state commissions have been quick to designate competitive carriers as ETCs in rural telco areas with little or no public interest analysis.*

Fact: Competitive ETCs have received designation in rural telco study areas fewer than 20 times. Western Wireless represented 14 of these designations. In each case, the designation process was quite lengthy – on average 2 years, and in some cases 4 years – and the public interest inquiries were exhaustive and thorough.

- The most important public interest factor is whether consumers in a given area would benefit from the entry of a competitive carrier in the universal service marketplace. It is not surprising that the answer is usually yes.
- Several state commissions have rejected arguments that that financial pressures on the fund mean that the public interest is served by rejecting ETC applications.
- Rural ILECs argue that they will be unable to provide service when competitive ETCs enter their areas, but they have never provided evidence that this is the case. In reality, no ILEC has ever exited a market in response to competitive entry.

About Western Wireless

- Western Wireless is a regional CMRS carrier that focuses on providing high-quality cellular service to consumers in rural areas.
 - Western Wireless provides service to over 1.1 million consumers, primarily under the Cellular One® brand name, in all or parts of 19 western states – Arizona, Arkansas, California, Colorado, Idaho, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Utah, and Wyoming.
 - Western Wireless' licenses consist of 88 Rural Service Areas ("RSAs") and 18 Metropolitan Statistical Areas ("MSAs"), covering approximately 25% of the landmass of the continental U.S., but just over 3% of the population. The areas served by Western Wireless have a combined population of over 10 million people and an average population density of 11 people per square mile.
 - Western Wireless has recently undertaken a major network upgrade to offer digital cellular service to approximately 75% of the population in its service area, and expects to complete the deployment of digital technology, and to more broadly deploy next generation digital technology, *e.g.*, 1XRTT, in the near future.
- Western Wireless has been designated as an Eligible Telecommunications Carrier in 14 states – California, Colorado, Iowa, Kansas, Minnesota, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Utah, and Wyoming – and on the Pine Ridge Reservation in South Dakota. Western Wireless is currently receiving federal support for serving 11 of those states.
 - Western Wireless receives federal high-cost support amounting to only approximately \$3 per month per universal service customer within its ETC areas.
- Western Wireless' offers competitive universal service in rural areas using Wireless Local Loop customer equipment, as well as cellular handsets. Wireless/wireline competition is increasingly important in the rural area Western Wireless serves.
 - A recent poll by an independent market research firm found that, of the consumers in rural areas served by Western Wireless who had wireless service, one-half stated that their cellular phone has become more important to them and their landline phone has become less important.
 - The same survey found that 51% of consumers said that wireless service has replaced some or a large percentage of their home landline telephone service; 48% reported that wireless service has replaced 90% or more of their landline long distance; and 23% of respondents reported that they consider their wireless phone to be their primary phone.

Competitive Universal Service Principles

1. ***Rural customers should have access to affordable telecommunication services, comparable in quality and price to urban areas, from a range of competitive service providers.***

The Telecommunications Act of 1996 opened all sectors of the telecommunications marketplace to competition.

Consumers should be able to choose their provider based on the best price and service, without being steered to an ILEC by unbalanced subsidies. Artificial monopolies hurt consumers.

2. ***Funding should be explicit and sufficient to provide for critical infrastructure in rural areas.***

All universal service support should be provided in an equal dollar amount per line to ILECs and competitive carriers alike. Funding mechanisms should neither protect ILEC or wireless inefficiencies, nor impair scrutiny of their historic costs.

The FCC must complete the process of eliminating implicit subsidies through access charges or other hidden mechanisms, which the courts have held violate the 1996 Act.

3. ***Congress did not intend for High Cost Fund support to flow to only one ETC, nor to only the first service provider to be designated in a study area.***

Competitive neutrality must continue to be a core principle guiding all universal service policy. Nowhere in Sections 214 or 254 of the Communications Act is there a “we got here first, everyone else is out of luck” clause.

4. ***The FCC was exactly right when it created the presumption that a rural area will benefit from competition unless solid economic data is presented to show that funding more than one ETC promotes uneconomic competition. Protect the public interest, not the incumbent.***

“An important goal of the Act is to open local telecommunications markets to competition. Designation of qualified ETCs promotes competition and benefits consumers by increasing customer choice, innovative services, and new technologies. . . . We reject the general argument that rural areas . . . are not capable of sustaining competition for universal service support.” (FCC, October 2001, Designating Western Wireless as ETC on Pine Ridge Reservation in South Dakota)

5. ***All carriers receiving support should be held to the same service obligations.***

Federal rules list a nine-point checklist that all recipients of high cost support must follow. State commissions and the FCC have ample means to audit, investigate and penalize companies who do not comply with the checklist.

State Commissions should not protect incumbents by imposing unreasonable conditions on competitive entrants. In particular, there is no valid reason to require new entrants to comply with burdensome legacy regulations, designed to protect against the monopoly power of incumbent carriers – except to raise the costs to new entrants.

6. ***Funding should come from the broadest base of providers and services.***

Consumers sustain universal service funding and their burden should not be ignored.

The growth of the universal service fund has little or nothing to do with competitive entrants. ILECs still receive 96 to 97 percent of high-cost federal universal service funds (the fund is approximately \$3 billion). And the rural ILECs continue to lobby to eliminate even the existing modest, inflation-indexed cap on the growth of the funding they receive, which would truly balloon the fund.

Competitively neutral policy alternatives are available to limit the growth of the fund if necessary, without reestablishing barriers to competition.

REMARKS TO NARUC PANEL ON UNIVERSAL SERVICE SUPPORT

Michele Farquhar, Hogan & Hartson

February 24, 2003

I am pleased to be here representing the perspective of competitive eligible telecom carriers or ETCs, who are working to bring the benefits of both competition and universal service to rural consumers, who want a choice in telecom providers in their markets.

Our ultimate objective is to advance universal service through competition and a competitively neutral universal service system. And because we are primarily facilities-based providers, we are building real telecom infrastructure, deploying advanced technologies, improving quality of service, and adding real choices in rural communities.

We're pleased that the Joint Board has launched its proceeding to review FCC rules relating to fulfilling the dual goals of preserving universal service and fostering competition. This is an excellent opportunity for competitive ETCs to explain how rural markets have changed, how consumers benefit from competition and increasing use of wireless technologies in particular, and to correct many misperceptions that may have contributed to the launch of this proceeding. Right now, competitive ETCs receiving federal universal service funding feel that they have a big target painted on their chests, even though their impact on the fund is actually quite small.

Here are a few basic facts that the Joint Board will discover as they review the record:

First, competitive ETCs are not responsible for the explosive growth in the federal universal service fund: Competitive ETCs account for less than 5% -- just 4.2% -- of all distributions from the federal high-cost universal service funds. Moreover, only 10% of the overall growth in distributions from the federal high-cost funds during the past six quarters has been attributable to competitive ETCs. Indeed, total distributions from the federal high-cost funds have grown 71 percent over the most recent six-quarter period, from \$1.93 billion to \$3.3 billion -- and a full 90% of that growth is attributable to incumbent LECs.

Furthermore, the rural incumbent LECs *continue* to push for even more money for the federal universal service high-cost funds -- they are actively lobbying to lift the long-standing caps on the growth rates of certain components of these funds so that they will increase even more rapidly and without any limitations at all. At the same time, they are lobbying aggressively to deny competitive ETCs any distributions from the fund, or greatly reduced funding.

Second, there is no "windfall" going to competitive ETCs -- Although some parties argue that portability of support gives competitive ETCs a "windfall" because their costs may be lower than ILECs, in fact it is very expensive for wireless carriers or other competitive ETCs to serve rural areas, especially given the low population density

and often challenging terrain. The costs of providing wireless service in rural areas are substantially higher than in denser urban and suburban areas, and the interconnection costs alone can be ten times higher. Also, because competitive ETCs are new entrants and serve a lower proportion of the population in any given area than ILECs, their *per-subscriber* embedded costs in any given area are usually higher than those of the ILECs.

Likewise, the portable, or “explicit” federal high-cost support does not begin to cover the costs of competitive carriers, and reflects only a portion of the overall funding received by the ILECs through state universal service programs, access charges, and other implicit sources. As an example, while the areas that Western Wireless serve have, on average, only 11 residents per square mile, Western Wireless receives, on average, only only \$3 per month per universal service customer in its ETC areas from all federal high-cost funds.

The reality is that wireless carriers and CLECs that receive support funds are investing these funds in additional cell sites, switching equipment, and other telecom infrastructure used to expand and improve the service that they provide to rural America. In many cases, competitive ETCs are using these funds to offer innovative rate plans and to expand telecom subscribership in underserved communities such as Indian reservations. During a period of extraordinarily tight capital markets and severe difficulties for CLECs and many wireless carriers, the universal service funds are making an important contribution toward ensuring that rural America does not fall further behind in the deployment of competitive telecom alternatives.

Third, rural consumers in particular are increasingly relying on wireless. It is well known that consumers nationwide are using wireless as their primary phone service or for their greatest minutes of use – a recent Roper study reported in February’s *Consumer Reports* found that 3 in 10 Americans ages 18 to 29 use a wireless phone as their primary phone. And this trend is even more pronounced in *rural* areas, as evidenced by a new study by Western Wats Center (an independent market research company in Provo, Utah) of rural wireless consumers within Western Wireless’s RSAs: 50% stated that their cell phones had become more important to them and their landline phone has become less important; 51% said that wireless service has replaced some or a large percentage of their home landline telephone service; 48% reported that wireless service has replaced 90% or more of their landline long distance; and 23% reported that they consider their wireless phone to be their primary phone. Likewise, Western Wireless has seen its monthly average minutes of use per subscriber grow from 132 minutes in 1998 to 353 minutes in 2002.

Fourth, consumers want choice, whether in urban or rural markets. Some ILEC advocates have said that consumers in rural America are satisfied with a single provider of phone service and have no interest in competitive alternatives. We categorically reject this argument. Consumers in rural areas have the same interest as consumers everywhere in competitive choice, which brings incentives for both the incumbent and new entrant to improve service quality, deploy more advanced services, and offer service at lower rates. For example, incumbent rural telcos have often

responded to new competitive service offerings by expanding their local calling areas or by lowering rates. In fact, state commissions have been nearly unanimous in finding that competition in rural areas is in the public interest. Competitive carriers have brought consumers access to telephone service for the very first time in some communities, such as the Pine Ridge Reservation in South Dakota, and have brought new and innovative services previously not available from the incumbent in places like Regent, North Dakota. In this way, competitive ETCs are advancing universal service for the benefit of consumers.

We believe that these simple truths will help frame the coming debate on universal service and competition issues. To be sure, we would be the first to admit that changes might be needed to the high-cost funding system. But those changes must be done in such a way that wireless is not relegated to the back of the bus. If we maintain a level playing field between all competitors, then the real beneficiaries will be consumers in rural America.

In closing, I'd like to cite to a speech by Commissioner Adelstein, in which he said that "Federal support is intended to promote universal service, not to subsidize artificial competition – or, for that matter, to keep it at bay. Neither of these pillars should be promoted at the expense of the other." We agree with Commissioner Adelstein on this point. After the 1996 Act, the Joint Board and the FCC implemented portability of support in order to ensure that universal service would not artificially block competition. The courts of appeals have affirmed that the Act requires portability of support, so that universal service does not artificially interfere with competition.

Portability remains a crucial means to ensure that rural consumers achieve the benefits from both universal service and competition. Portability means that neither ILECs nor competitive entrants get artificial regulatory advantages. Portability establishes a level playing field, without artificial monopolies or artificial competition.

Thanks for the opportunity to participate on this panel, and I urge all of you to work with us to understand the facts and to separate the myths from the realities in this complex but important area.

Contact: Michele Farquhar 202/637-5663 mcfarquhar@hhlaw.com

Federal USF Facts

(all figures based on annual projections in USAC Quarterly Reports through Q2 2003)

Total High Cost FUSF Distributions

- The total projected annual distribution from the High Cost Federal Universal Service Fund (FUSF) for 2003 is \$3.30 billion.
- Total distributions from the FUSF have grown 71 percent over the most recent six-quarter period, from a projected annual projection of \$1.93 billion to \$3.3 billion.

Competitive ETCs

- Competitive ETCs account for just 4.2 percent of all FUSF distributions, and the total of distributions to competitive ETCs has grown from a projected annual projection of \$8.32 million to \$147.3 million in the last six quarters.
- Rural customers are able to choose from among several different service providers. The number of competitive ETCs has grown from 23 to 70 in a little over one year (15 months).

Fund Growth Due Largely to Increased ILEC Support

- Nearly 90 percent of the overall growth in distributions from the FUSF during the last 6 quarters is attributable to incumbent LECs. The growth in distributions from the FUSF over the same period attributable to competitive ETCs (\$139 million) is only 10.1 percent of the total growth in distributions from the fund over the same period (\$1.37 billion).

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FOR IMMEDIATE RELEASE

Wireless Telephone Service Becomes Essential Communication Tool In Rural Areas

Survey finds that consumers are using wireless service more and landline service less

(DATELINE) – February XX, 2003 – A study conducted by Western Wats, a leading independent research organization in Provo, Utah, found that people living in rural areas are more likely to use wireless phones than ever before. In addition, Western Wireless, the largest independent rural wireless service provider in the United States and owner of Cellular One brand, has observed that its customers are using about three times more minutes per month than they did just four years ago.

The survey, which was conducted in counties with population densities averaging eight people per square mile, indicated that respondents have not increased the number of phone lines in their home over the past two years, but there was a 34 percent increase in the number of wireless phones during that same period.

"Wireless technology has become an essential form of communications across America, and consumer demand continues to be strong. We are seeing this especially in rural areas where landline telephone companies are offering significantly smaller local calling areas and wireless rate plans have become more affordable and competitive," said Mikal Thomsen, president of Western Wireless Corporation. "More and more, Western Wireless is seeing itself competing directly with local telephone companies, as consumers are utilizing wireless service for a significant amount of their telephone calls, and in many cases all of their telecommunications needs."

The survey found that of the rural consumers who had wireless service:

- One-half stated that their wireless phone has become more important to them and their landline phone has become less important;
- Fifty-one percent said wireless service has replaced some or a large percentage of their home landline service;
- Forty-eight percent reported that wireless service has replaced 90 percent or more of their landline long distance;

- Nearly a quarter reported that they consider their wireless phone to be their primary phone; and
- Two-thirds reported that they have friends or family members who they contact primarily on their wireless phone.

The survey also indicated that consumer demand is strong for wireless service in rural areas. Of the people who do not have wireless service, 50 percent plan to purchase a wireless phone in the next six months, and they ranked “safety” as their top reason, and “convenience” as their next reason.

Western Wireless was the first wireless company to bring advanced digital technology and IXRTT data services to rural areas. The challenge to bringing urban-style service to rural America is that a single cell site serves 1,000 potential customers in rural America, whereas the same cell site investment would serve 50,000 in an urban area. Despite not providing service to any top 100 markets, which have lower costs to build and maintain service, Western Wireless is competing with the largest wireless companies in America and the smallest local telephone companies by providing rural consumers competitive pricing and comprehensive coverage.

The Federal Communications Commission makes universal service support available to wireless and wireline communications companies to provide telephone service in sparsely-populated areas. Western Wireless is both a contributor to and a recipient of that fund, and uses universal service funds to provide and enhance its service in rural regions.

“The hundreds of millions of dollars Western Wireless has invested, over and above any monies received from the universal service fund, enables wireless communications to continue to advance in rural America. We are excited about meeting consumers’ expectations of quality and coverage that rivals urban areas,” said Thomsen.

About Cellular One

Western Wireless Corporation operates under the Cellular One name and is a leading provider of rural communications in the Western United States. The company owns and operates wireless cellular phone systems marketed under the Cellular One national brand name in 19 western states. Western Wireless provides service to more than a million customers. For more information about Western Wireless, visit www.wwireless.com.

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